ORDINANCE NO. 2006-054

Adopted by the Sacramento City Council

October 3, 2006

AN ORDINANCE AMENDING SECTION 3.32.030 OF CHAPTER 3.32 OF TITLE 3 OF THE SACRAMENTO CITY CODE TO CLARIFY ORIGINAL INTENT AND REMOVE OBSOLETE REFERENCES, AND DECLARING SAID ORDINANCE TO BE AN EMERGENCY ORDINANCE TO TAKE EFFECT IMMEDIATELY PURSUANT TO SECTION 32 OF THE CITY CHARTER

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

The City Council finds and declares:

1. The City of Sacramento established a telephone user tax in 1969 for charges on telephone services, and since 1989 the City has imposed that tax on every person in the City using intrastate, interstate and international telephone communication services. In 1993 the telephone user tax was expanded to include cellular and wireless telephone service.

2. The City's telephone user tax has been applied consistent with the application of the Federal Excise Tax (FET) upon local and long distance telecommunication services, as the FET has historically been interpreted by the Internal Revenue Service. The common understanding of definitions the Internal Revenue Service used in this regard was set forth in Revenue Ruling 79-404.

3. On May 25, 2006, the Internal Revenue Service announced in Treasury Notice 2006-50 that it has changed its interpretation of the definitions used in the FET provisions and specifically revoked Notices adopted in 2005 which had reaffirmed Revenue Ruling 79-404. As a result, effective August 1, 2006, the Internal Revenue Service is no longer applying the FET to long distance and bundled long distance and local service provided under a single plan that does not separate the charges for local telephone service.

4. In establishing the telephone user tax, the City Council linked its local ordinance to the FET by cross references to certain FET statutes and regulations and has relied upon the Internal Revenue Service's historical interpretation of the FET. However, the Council does not wish to adopt the Internal Revenue Service's new understanding of the FET, but rather wishes to continue to impose the City's telephone user tax as it has been historically imposed, including taxing long distance telephone service irrespective of whether such service is charged based on elapsed transmission time or on

distance, or charged as bundled service without separately delineating specific telephone service charges.

5. By the enactment of this Ordinance amending the City's telephone user tax provisions, the City Council reaffirms that it will continue its long-standing practice of applying its telephone user tax in a manner consistent with the Internal Revenue Service's interpretation of the FET that was in effect prior to the issuance of Notice 2006-50 on May 25, 2006. The amendments simply re-state the ordinance as it was previously enacted, by incorporating pertinent language from previously referenced FET statutes and regulations as they were interpreted by the Internal Revenue Service prior to May 25, 2006, and deleting any cross references to FET statutes and regulations. The amendments are not intended to make any change in the way in which the tax is calculated, imposed or administered, and therefore do not constitute a change in the methodology of calculating the tax.

SECTION 2

Section 3.32.030 of the Sacramento City Code is amended to read as follows:

Section 3.32.030 Telephone user tax.

A. There is imposed a tax upon every person other than a public agency in the city using intrastate, interstate or international telephone communication services in the city, and using any teletypewriter exchange services in the city or mobile, cellular telephone or enhanced specialized mobile radio service communication when the owner or lessee of the telephone has a billing address in the city. The tax imposed by this section shall be at the rate of five percent of the charges made for such services and shall be paid by the person paying for such services.

B. As used in this section:

(1) The term "charges" shall not include charges for services paid for by prepaid telephone cards or by inserting coins in coin-operated telephones except that where such a coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due.

(2) The term "telephone communications services" means--
(a) local telephone service;
(b) toll telephone service; and
(c) teletypewriter exchange service
The term "telephone communication services" shall not include land mobile services or maritime mobile services.

(3) The term "local telephone service" means--
(a) the access to a local telephone system, and the privilege of telephonic

quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and

(b) any facility or service provided in connection with a service described in paragraph (a).

The term "local telephone service" does not include any service which is a "toll telephone service" or a "private communication service".

(4) The term "toll telephone service" means--

(a) a telephonic quality communication for which (i) there is a toll charge which varies in amount with the distance or elapsed transmission time of each individual communication and (ii) the charge is paid within the United States, and

(b) a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

(5) The term "teletypewriter exchange service" means the access from a teletypewriter or other data station to the teletypewriter exchange system of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter or other data stations constituting a part of the same teletypewriter exchange system, to which the subscriber is entitled upon payment of a charge or charges (whether such charge or charges are determined as a flat periodic amount, on the basis of distance and elapsed transmission time, or in some other manner). The term "teletypewriter exchange service" does not include any service which is "local telephone service".

(6) The term "private communication service" means--

(a) the communication service furnished to a subscriber which entitles the subscriber--

(i) to exclusive or priority use of any communication channel or groups of channels, or

(ii) to the use of an intercommunication system for the subscriber's stations, regardless of whether such channel, groups of channels, or intercommunication system may be connected through switching with a local service, toll service, or teletypewriter exchange service,

(b) the switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of, channels or systems described in paragraph (a), and

(c) the channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system.

The term "private communication service" does not include any communication service unless a separate charge is made for such service.

(7) The term "land mobile service" means a service of radio communications between land base stations and land mobile stations (i.e., stations capable of transmitting radio communications while in motion or during stops at unspecified points within a country or continent) and stationary land stations, or between land mobile stations.

(8) The term "maritime mobile services" means a service of radio communications between coast stations (i.e., on land) and ship stations (mobile stations on water vessels, including a lifeboat, life-raft or any other survival equipment), or between ship stations.

C. The tax imposed in this section shall be collected from the service user by the person providing the intrastate, interstate or international telephone communication services. The amount of tax collected in one month shall be remitted to the city collector on or before the last day of the following month. The amount on which the tax with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then (i) the amount on which the tax with respect to each such group shall be based shall be the sum of all items within that group, and (ii) the tax on the remaining items not included in any such group shall be based on the charge for each item separately.

D. The following shall be exempt from any tax imposed by this section:

(1) News services. No tax shall be imposed under this section, except with respect to local telephone service, on any payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

(2) International, etc., organizations. No tax shall be imposed under this section on any payment received for services furnished to an international organization, or to the American National Red Cross.

(3) Servicemen in combat zone. No tax shall be imposed under this section on any payment received for any toll telephone service which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, provided a certificate, setting forth such facts as the Secretary of the United States Treasury may by regulations prescribe, is furnished to the person receiving such payment. The term "combat zone" means any area which the President of the United States by

Executive Order designates, for federal income-tax purposes, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(4) Items otherwise taxed. Only one payment of tax under this section shall be required with respect to the tax on any telephone communication service, notwithstanding that the lines or stations of one or more persons are used in furnishing such service.

(5) Common carriers and communications companies. No tax shall be imposed under this section on the amount paid for any toll telephone service described in this section, to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

(6) Installation charges. No tax shall be imposed under this section on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

(7) Nonprofit hospitals. No tax shall be imposed under this section on any amount paid by a nonprofit hospital for telephone communication services furnished to such organization. For purposes of this subsection, the term 'nonprofit hospital' means a hospital that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(8) Exemption for nonprofit educational organizations. No tax shall be imposed under this section on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term 'nonprofit educational organization' means an educational organization which is exempt from income tax under section 501(a) of the Internal Revenue Code, including a school operated as an activity of an organization described in section 501(c)(3) of the Internal Revenue Code which is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

SECTION 3

If this Ordinance is declared to be invalid, then the provisions of Section 3.32.030 as that Section read and was interpreted by the Internal Revenue Service on May 24, 2006, will become effective.

SECTION 4

This Ordinance shall not be construed as imposing a new tax, or extending or increasing an existing tax.

SECTION 5

This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of public peace, health or safety. The facts constituting such urgency are as follows: The revenues from the telephone user tax are anticipated to be approximately $22.4 million for Fiscal Year 2006-2007 if the telephone user tax is applied consistent with the Internal Revenue Service's interpretation of the FET prior to the issuance of Notice 2006-50 on May 25, 2006. In the event that the City's telephone user tax were to be applied consistent with Notice 2006-50, it is projected that the total telephone user tax revenues could decrease by approximately $13.85 million for Fiscal Year 2006-07. The revenues from the telephone user tax are critical to the public peace, health and safety in that these revenues pay the costs associated with essential services, including public safety.

SECTION 6

This Ordinance shall become effective immediately upon its adoption pursuant to Section 32 of the Charter of the City of Sacramento, and shall remain in effect until the effective date of any superseding ordinance.

Adopted by the City of Sacramento City Council on October 3, 2006 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.

Heather Fargo
Mayor, Heather Fargo

Attest:
Shirley Concolino
Shirley Concolino, City Clerk

Passed for Publication September 26, 2006
Published September 29, 2006
Effective October 3, 2006